

October 21, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the transportation, possession, and sale of marijuana (A.G. File No. 11-0040).

Background

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. For example, possession of any amount of marijuana is punishable by imprisonment for up to one year. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of one ounce or less of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medical purposes under state law. The U.S. Supreme Court ruled in 2005, however, that federal authorities could continue under federal law to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the U.S. Department of Justice's (DOJ's) current policy (announced in a June 29, 2011 memo from the department to its attorneys) is to not prosecute individual marijuana patients and caregivers who act in compliance with state medical marijuana laws. However, the department stated that it would continue to prosecute "commercial" medical marijuana activities. Moreover, in an earlier October 13, 2010 letter to the U.S. Drug Enforcement Agency, the U.S. Attorney General stated that the U.S. DOJ would continue to enforce federal laws prohibiting marijuana activities related to recreational use.

Proposal

This measure changes state law to generally decrease penalties for certain “low-level marijuana offenses” defined by the measure. Despite these changes to state law, such marijuana-related offenses would continue to be subject to imprisonment under federal law.

Marijuana Possession. Under current state law, it is an infraction punishable by a fine of up to \$100 for any person to possess one ounce or less of marijuana. Currently, it is also a misdemeanor crime punishable by up to six months in jail, up to a \$500 fine, or both, for any person to possess more than one ounce of marijuana. However, under this measure, it would be an infraction punishable by a fine of up to \$250 or community service for persons age 21 or older to possess more than one ounce but not more than two ounces of marijuana. The measure does not change the existing penalty for possession of one ounce or less of marijuana. In addition, the existing penalties for marijuana possession would continue to apply for persons under age 21.

Transporting and Giving Away Marijuana. Under current law, it is a misdemeanor crime punishable by up to a \$100 fine to transport or give away one ounce or less of marijuana. Currently, it is also a felony subject to two to four years imprisonment in jail or prison for any person to transport or give away more than one ounce of marijuana. However, under this measure, it would be an infraction punishable by up to six months in jail, up to a \$500 fine, or both, for persons age 21 or older to transport or give away two ounces or less of marijuana. For persons under age 21, the measure does not change the existing penalty for transporting or giving away one ounce or less of marijuana. The measure does, however, make it a misdemeanor crime punishable by up to six months in jail, up to a \$500 fine, or both, for persons under age 21 to transport or give away more than one ounce but not more than two ounces of marijuana.

Other Marijuana-Related Activities. Under current law, it is a felony subject to 16 months to 4 years imprisonment in prison or jail for any person to sell, possess for sale, or cultivate marijuana. However, under the measure it would be an infraction punishable by a fine of up to \$250 or community service for persons age 21 or older to engage in such marijuana-related activities involving two ounces or less of marijuana. In addition, it would be a misdemeanor crime punishable by up to six months in jail, up to a \$500 fine, or both, for persons under age 21 to engage in the same marijuana-related activities also involving two ounces or less of marijuana.

The measure does not change existing state penalties for persons who sell, or possess to sell, marijuana to a minor, or employ a minor in a criminal enterprise involving marijuana. The measure also states that it does not limit or change (1) the authority of employers to enact and enforce policies pertaining to marijuana in the workplace, (2) laws pertaining to driving under the influence of marijuana, (3) existing laws or regulations pertaining to the state’s Medical Marijuana Program, and (4) existing laws which allow certain marijuana offenders to have their criminal convictions waived upon successful completion of court mandated programs.

Fiscal Effects

The measure could result in savings to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number placed under community supervision (such as county probation). County jail beds that would no longer be needed for marijuana offenders might be used for other criminals who are

now being released early because of a lack of jail space. In addition, the measure could result in a reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the state court system. This is because processing infractions is generally less expensive than processing arrests for misdemeanor and felony crimes. State and local governments may decide to redirect existing resources to other law enforcement and court activities. Collectively, state and local governments spend in the range of the low hundreds of millions of dollars annually on the above criminal justice activities related to the state's marijuana laws. However, it is unknown what percentage of these costs are related to the low-level marijuana offenses defined in this measure.

Summary of Fiscal Effect

We estimate that this measure would have the following major fiscal effect:

- Unknown savings to state and local governments on the costs of enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance